

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of New  
Century Telecom, Inc., (U-5912-C) for  
Approval of Stock Purchase Agreement  
and Related Transfer of Control.

Application 02-10-007

**COMMENTS OF THE CONSUMER PROTECTION AND SAFETY DIVISION  
TO NEW CENTURY TELECOM, INC.'S APPLICATION  
FOR REHEARING OF DECISION 06-04-048**

Pursuant to Rule 86.2 of the California Public Utilities Commission's Rules of Practice and Procedure, the Consumer Protection and Safety Division (CPSD) hereby files the following comments to New Century Telecom, Inc.'s (NCT) Application for Rehearing of Decision (D.) 06-04-048.

In D. 06-04-048, the Commission denied NCT's application to transfer ownership of NCT from Kathleen Helein to Karyn Bartel (a transaction that was consummated without the Commission's authorization in March 2003 as admitted by NCT in responses to data requests) and fined NCT the sum of \$ 55,000 for violating Rule 1 of the Commission's Rules of Practice and Procedure (Rule 1), several Commission decisions, and parts of the Public Utilities Code.

The Commission also found that the Helein Law Group, which continues to represent NCT before the Commission, violated Rule 1 by providing false information to the Commission. In lieu of a fine, however, D. 06-04-048 requires that for the next three years the Helein Law Group must formally acknowledge in all documents that it files with the Commission that D.06-04-048 concluded that the Helein Law Group violated Rule 1.

**I. NCT RECEIVED APPROPRIATE NOTICE OF THE ALJ'S DRAFT DECISION AND HAD AMPLE TIME TO RESPOND WITH COMMENTS**

NCT<sup>1</sup> alleges that ALJ Kenney's Draft Decision, mailed March 23, 2006, was not properly served and, therefore, NCT was deprived of the statutory notice and comment period, and that NCT's right to due process was violated. (Rhg. App., pp. 2-3)

On March 23, 2006, at 4:20 pm, a Commission employee, Teresita C. Gallardo, sent an e-mail to all persons listed on the service list for Application (A.) 02-10-007 informing them that the text of ALJ Kenney's Draft Decision denying the application and imposing a fine was made available at the Commission's website. The e-mail also stated that a Notice of Availability of the Draft Decision had been served by regular mail on all persons on the service list and provided a contact e-mail address and phone number for anyone with questions. Ms. Gallardo sent the above e-mail to [smr@thlglaw.com](mailto:smr@thlglaw.com) on behalf of NCT, the same e-mail address to which she had previously sent e-mails regarding A. 02-10-007. (Exh. A)

That same day, March 23, 2006, a Commission employee, Sandra Jackson, sent by regular mail a copy of the Notice of Availability of the Draft Decision accompanied by a Proof of Service by Mail to all persons on the service list, including to the following attorney on behalf of NCT:

Loubna W. Haddad  
The Helein Law Group, LLC  
8180 Greensboro Drive, STE 700  
McLean, VA 22102  
[smr@thlglaw.com](mailto:smr@thlglaw.com)  
(Exh. B)

---

<sup>1</sup> In the Application for Rehearing, the Helein Law Group, P.C. (which refers to itself as the "Firm") states that the firm is petitioning for rehearing of D. 06-04-048. Therefore, the application for rehearing refers to the firm as if the firm is the applicant. The Helein Law Group, however, should not be referring to the "firm" as the applicant for rehearing, but rather to its client NCT. Therefore, for purposes of this analysis, CPSD shall refer and respond to the application for rehearing as if any and all assertions therein are being made by NCT with the exception of the Rule 1 violations that are attributable to the Helein Law Group.



On April 28, 2006, a Commission employee, Sandra Jackson, served a copy of D. 06-04-048 by regular mail on all parties on the service list for A. 02-10-007. The mailing address for NCT to which D. 06-04-048 was mailed is as follows:

Loubna W. Haddad  
The Helein Law Group, LLC  
8180 Greensboro Drive, STE 700  
McLean, VA 22102  
[smr@thlglaw.com](mailto:smr@thlglaw.com)  
(Exh. C)

A review of the files from the Commission's Docket office indicates that the above e-mail address and regular mail address for NCT's counsel, the Helein Law Group, are the same addresses to which Ms. Gallardo on December 21, 2004 had sent a copy of the "ALJ's Ruling Providing Notice Of The Judge's Intent To Prepare A Draft Opinion That Denies The Application And Imposes A Fine Of \$25,000." A copy of the Certificate of Service and Service List regarding said ruling is attached hereto. (Exh. D)

On January 28, 2005, NCT, through its counsel The Helein Law Group, served by e-mail NCT's "Response to the ALJ's Ruling Providing Notice Of The Judge's Intent To Prepare A Draft Opinion That Denies The Application And Imposes A Fine Of \$25,000." A copy of the Certificate of Service and Service List attached to NCT's response is attached hereto. (Exh. E) Said response indicates that NCT received the above-mentioned ruling at the e-mail and regular mail address on the Commission's service list – the same addresses to which the Draft Decision and D. 06-04-048 were later mailed.

Neither NCT nor its counsel the Helein Law Group ever informed this Commission of a new e-mail or new regular mail address, nor did they indicate that either address was insufficient or inappropriate in any way. Thus, the Commission had no reason to use any other e-mail or regular mail address in regard to the Draft Decision and D. 06-04-048.

NCT also appears to be confused as to what constitutes the Draft Decision in this case. NCT refers to a "draft decision dated September 20, 2005" stating that it is the only decision served on NCT and its counsel. (Rhg. App., p. 8) This simply isn't the case.

On September 20, 2005, ALJ Kenney sent an e-mail to Charles Helein of the Helein Law Group informing him that he intended to prepare a draft decision regarding NCT's application to transfer control of NCT from Kathleen Helein to Karyn Bartel. In this e-mail, ALJ Kenney informed Mr. Charles Helein that he intends to deny the application for transfer and fine NCT for various violations. **(Exh. F)**

Of relevance, however, is the fact that Mr. Helein never got back to ALJ Kenney or anyone else from the Commission informing the Commission of a new e-mail address or different regular mail address for his law firm. In fact, neither NCT nor its counsel ever tried to correct said addresses prior to the filing of this application for rehearing.

Based on the above, it is clear that the Commission is in no way responsible for NCT's counsel's failure to file comments to the Draft Decision in this proceeding. Moreover, the Commission acted appropriately in serving the defendants by e-mail and by regular mail at the addresses on the service list. Hence, there was no violation of NCT's right to procedural due process. Clearly, this claim is without merit and should be denied.

## **II. THE COMMISSION HAS BOTH CONSTITUTIONAL AND STATUTORY AUTHORITY TO FINE NCT FOR ITS UNLAWFUL CONDUCT AND TO SANCTION THE HELEIN LAW GROUP FOR ITS VIOLATION OF RULE 1**

### **A. The Commission Has Jurisdiction Over NCT**

In D. 06-04-048, the Commission found that NCT had engaged in various violations, including a violation of Sections 702, 854(a), D. 02-01-038, and Rule 1 of the Commission's Rules of Practice and Procedure (Rule 1). (See D. 06-04-048, pp. 12-14.) Consequently, the Commission levied a fine of \$55,000 against NCT. (Id. at pp. 15-19.)

NCT asserts that because the Draft Decision came out after NCT's CPCN had been revoked, NCT was no longer a carrier subject to the Commission's jurisdiction. NCT argues as follows:

“Effective December 6, 2005, the effective date of the revocation of NCT's CPCN and its cessation of offering services to the public prior thereto, NCT ceased to be a carrier holding itself out to the public to provide telecommunications



services. The Firm is not an entity regulated by the Commission. By the time ALJ Kenney submitted the Draft Decision in March 2006, the Commission was divested of jurisdiction over NCT and never had any jurisdiction over the firm.” (Rhg. App., p. 9)

The California Supreme Court has found that the Commission had broad constitutional and statutory authority to regulate utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures. (*Consumers Lobby Against Monopolies* (1979) 25 Cal.3d 891; see Cal. Const., §§ 2, 4, 6.) Moreover, the Commission's powers are not restricted to those expressly mentioned in the Constitution, but enhanced by the Legislature's plenary power to confer additional authority and jurisdiction upon the commission. (*Id.* at 905; see Cal. Const., Art. XII, § 5.) For example, Section 701 of the Public Utilities Code confers upon the Commission expansive authority to “do all things,” whether specifically designated in the Public Utilities Act, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction. This authority has been liberally construed. (See, e.g., *People v. Superior Court* (1965) 62 Cal.2d 515 [42 Cal.Rptr. 849, 399 P.2d 385]; *People v. Western Air Lines, Inc.* (1954) *supra*, 42 Cal.2d 621; *Sale v. Railroad Commission* (1940) 15 Cal.2d 612 [104 P.2d 38]; *Kern County Land Co. v. Railroad Com.* (1934) 2 Cal.2d 29 [38 P.2d 401, 39 P.2d 402].) (*Id.* at 906.)

NCT's argument that the Commission's jurisdiction ceased when NCT's CPCN was revoked is erroneous and without merit. The Commission's constitutional and statutory authority (jurisdiction) over NCT did not end when NCT's CPCN was revoked for numerous violations as specified in D. 06-04-048. Pursuant to that authority, the Commission fined NCT for its past violations of statute, decisions, and rules of practice and procedure, as set forth in D. 06-04-048.

#### **B. The Commission Has Jurisdiction Over The Helein Law Group**

In D. 06-04-048, the Commission found that both NCT and the Helein Law Group violated Rule 1 by providing false information to the Commission. In lieu of a fine, the

decision requires the Helein Law Group to provide notice in all documents filed at the Commission for the next three years that the Helein Law Group was found to have violated Rule 1 in D. 06-04-048.

NCT's counsel, the Helein Law Group, asserts that the Commission has no authority to sanction it in any manner whatsoever arguing as follows:

“As the Firm is not and could never be a carrier, has never and can never subject itself to Commission jurisdiction as a carrier, issuing sanctions in a proceeding dealing with carrier compliance is not within the Commission's jurisdiction, is *ultra vires* and of no effect” (Rhg. App., p. 9.)

Sections 2111 and 2112 provides that any corporations and persons, other than public utilities, that aid or abet any public utility in any violation or noncompliance, are guilty of a misdemeanor and may be fined by the Commission. Said sections provide the Commission with jurisdiction over persons and corporations that are not regulated entities. Moreover, under Rule 1, any person who signs a pleading or brief (as the Helein Law Group clearly did) by such act represents that he or she agrees to comply with the laws of this State “and never to mislead the Commission or its staff by an artifice or false statement of fact or law.”

In D. 06-04-048, the Commission found that both NCT and the Helein Law Group made false statements in response to a ruling by ALJ Kenney requesting that NCT disclose whether there were any complaints alleging significant wrongdoing with respect to Ms. Bartel or NCT that have been decided or were pending before the FCC or other state commissions. The Helein Law Group provided a response stating that there were no such complaints despite the fact that both NCT and the Helein Law Group were aware that NCT was under investigation by the Florida Public Service Commission for 42 slamming violations. (See D. 06-04-048, pp. 3-6) Such intentional misrepresentations resulted in violations of Rule 1.

Clearly, the Commission has the authority to take whatever action it deems necessary against the Helein Law Group for its violation of Rule 1. In this case, rather than pursuing a misdemeanor charge against the Helein Law Group, the Commission has

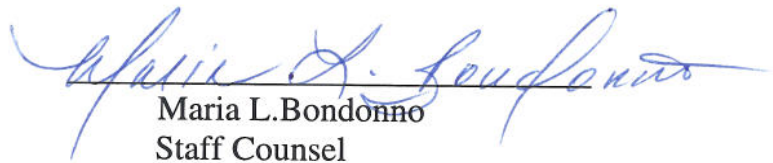


required the Helein Law Group to provide notice in all documents filed at the Commission for the next three years indicating that it was found to have violated Rule 1 in D. 06-04-048.

### **III. CONCLUSION**

In conclusion, both NCT and the Helein Law Group once again attempt to obfuscate the issues and confuse the reader with meaningless rhetoric, which often borders on committing more Rule 1 violations. NCT's application for rehearing should be denied and NCT should be required to pay the \$55,000 fine the Commission levied against it. The sanction against the Helein Law Group requiring it to identify the fact that it engaged in Rule 1 violations as found in D. 06-04-048 in any and all documents filed by the Helein Law Group before the Commission for the next three years should be enforced. Given the egregious nature of both NCT and the Helein Law Group's conduct in this state and before the Commission, such remedial measures seem mild at best.

Respectfully submitted,

  
Maria L. Bondonno  
Staff Counsel

Attorney for the Consumer Protection and Services  
Division

California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 355-5594  
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E-mail: bon@cpuc.ca.gov

June 8, 2006

# EXHIBIT A



**Bondonno, Maria L.**

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**From:** Gallardo, Teresita C.  
**Sent:** Thursday, March 23, 2006 4:20 PM  
**To:** Los Angeles Docket; Bondonno, Maria L.; la5173@camail.sbc.com; smr@thlglaw.com; Kenney, Timothy  
**Cc:** Gallardo, Teresita C.  
**Subject:** Courtesy E-mail Notification in Application 02-10-007 - Draft Decision of ALJ Kenney

As a courtesy, the Commission notifies you that the text of ALJ Kenney's Draft Decision Denying the Application and Imposing a Fine was made available at [http://www.cpuc.ca.gov/PUBLISHED/COMMENT\\_DECISION/54678.htm](http://www.cpuc.ca.gov/PUBLISHED/COMMENT_DECISION/54678.htm) on March 23, 2006. A Notice of Availability has been served by mail on all persons on the service list.

In case of problems with this e-mail or the internet link, please contact Tessie C. Gallardo at [tcg@cpuc.ca.gov](mailto:tcg@cpuc.ca.gov), telephone #(415) 703-2671.

# EXHIBIT B

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of New Century Telecom, Inc.  
(U-5912-C) for Approval of Stock Purchase  
Agreement and Related Transfer of Control.

Application 02-10-007  
(Filed October 8, 2002)

To: ALL PARTIES OF RECORD IN THE ABOVE-CAPTIONED PROCEEDING

**NOTICE OF AVAILABILITY**

The draft decision of ALJ Kenney has been made available at [http://www.cpuc.ca.gov/PUBLISHED/COMMENT\\_DECISION/54673.htm](http://www.cpuc.ca.gov/PUBLISHED/COMMENT_DECISION/54673.htm) on March 23, 2006. The draft decision requests authority under Section 854(a) to transfer ownership of New Century Telecom, LLC (NCT) to Karyn Bartel. The transaction was implemented without Commission authorization in March 2003. NCT's CPCN was revoked by Resolution T-16962, issued on October 27, 2005, for failure to file an annual report and to remit regulatory surcharges and fees. The draft decision denies the application because NCT is no longer a public utility and, therefore, Section 854(a) does not apply. The draft decision orders NCT to pay a fine of \$55,000 for violating Rule 1, several decisions, and parts of the Public Utilities Code.

Any recipient of this Notice of Availability who is not receiving service by electronic mail in this proceeding or who is unable to access the link to the Commission's web site given above may request a paper copy of the draft decision from the Commission's Central Files Office, at (415) 703-2045; fax number (415) 703-2263; e-mail [cen@cpuc.ca.gov](mailto:cen@cpuc.ca.gov).

The draft decision will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.



Page 2 of 2

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure," accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 77.3 opening comments shall not exceed 15 pages.

Comments must be filed with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 2.3 and 2.3.1. Electronic copies of comments should be sent to ALJ Kenney at [tim@cpuc.ca.gov](mailto:tim@cpuc.ca.gov). All parties must serve hard copies on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail or other expeditious methods of service. The current service list for this proceeding is available on the Commission's web site, [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

Dated March 23, 2006, at San Francisco, California.

  
Angela K. Minkin, Chief  
Administrative Law Judge

ANG:tcg

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of New Century Telecom, Inc.  
(U-5912-C) for Approval of Stock Purchase  
Agreement and Related Transfer of Control.

Application 02-10-007  
(Filed October 8, 2002)

To: ALL PARTIES OF RECORD IN THE ABOVE-CAPTIONED PROCEEDING

**NOTICE OF AVAILABILITY**

The draft decision of ALJ Kenney has been made available at [http://www.cpuc.ca.gov/PUBLISHED/COMMENT\\_DECISION/54673.htm](http://www.cpuc.ca.gov/PUBLISHED/COMMENT_DECISION/54673.htm) on March 23, 2006. The draft decision requests authority under Section 854(a) to transfer ownership of New Century Telecom, LLC (NCT) to Karyn Bartel. The transaction was implemented without Commission authorization in March 2003. NCT's CPCN was revoked by Resolution T-16962, issued on October 27, 2005, for failure to file an annual report and to remit regulatory surcharges and fees. The draft decision denies the application because NCT is no longer a public utility and, therefore, Section 854(a) does not apply. The draft decision orders NCT to pay a fine of \$55,000 for violating Rule 1, several decisions, and parts of the Public Utilities Code.

Any recipient of this Notice of Availability who is not receiving service by electronic mail in this proceeding or who is unable to access the link to the Commission's web site given above may request a paper copy of the draft decision from the Commission's Central Files Office, at (415) 703-2045; fax number (415) 703-2263; e-mail [cen@cpuc.ca.gov](mailto:cen@cpuc.ca.gov).

The draft decision will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

**PROOF OF SERVICE BY MAIL**

I, Sandra Jackson, declare:

I am over the age of 18 years, not a party to this proceeding, and am employed by the California Public Utilities Commission at 505 Van Ness Avenue, San Francisco, California.

On 3-23-06, I deposited in the mail at San Francisco, California, a copy of:

NOTICE OF AVAILABILITY

(Decision Number or Type of Hearing)

DD# 5484 4/27/06

(Date of Hearing)

A.02-10-007

(Application/Case/OII/OIR Number)

in a sealed envelope, with postage prepaid, addressed to the last known address of each of the addressees in the attached list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 3-23-06, at San Francisco, California.

Sandra Jackson

(Signature)



\*\*\*\*\* SERVICE LIST \*\*\*\*\*

Last updated on 05-DEC-2005 by: LIL  
A0210007 NOPOST

\*\*\*\*\* APPEARANCES \*\*\*\*\*

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THE HELEIN LAW GROUP, LLC  
8180 GREENSBORO DR STE 700  
MCLEAN VA 22102  
(703) 714-1300  
smr@thlglaw.com  
For: New Century Telecom, Inc.

\*\*\*\*\* STATE SERVICE \*\*\*\*\*

Los Angeles Docket Office  
CALIFORNIA PUBLIC UTILITIES COMMISSION  
320 W. 4TH STREET, SUITE 500  
LOS ANGELES CA 90013  
LAdocket@cpuc.ca.gov

Timothy Kenney  
Administrative Law Judge Division  
RM. 5021  
505 VAN NESS AVE  
San Francisco CA 94102  
(415) 703-1626  
tim@cpuc.ca.gov

\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*

# EXHIBIT C

**PROOF OF SERVICE BY MAIL**

I, Sandra Jackson, declare:

I am over the age of 18 years, not a party to this proceeding, and am employed by the California Public Utilities Commission at 505 Van Ness Avenue, San Francisco, California.

On 4-28-06, I deposited in the mail at San Francisco, California, a copy of:

06-04-048  
(Decision Number or Type of Hearing)

4-27-06

(Date of Hearing)

A-02-10007  
(Application/Case/OII/OIR Number)

in a sealed envelope, with postage prepaid, addressed to the last known address of each of the addressees in the attached list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 4-28-06, at San Francisco, California.

Sandra Jackson

(Signature)



A 02-10-007

ID#5484/11  
4/27/06

DECISION: 06-04048  
MAIL DATE: 4-28-06

Copy of "OPINION DENYING THE APPLICATION AND IMPOSING A FINE"  
mailed to the following.

SEE ATTACHED LIST FOR APPEARANCES, STATE SERVICE

4/27/06  
SMJ

Count 10

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

Last Update on 12-APR-2006 by: SMJ  
A0210007 NOPOST

\*\*\*\*\* APPEARANCES \*\*\*\*\*

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\*\*\*\*\* STATE EMPLOYEE \*\*\*\*\*

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tim@cpuc.ca.gov

\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*

# EXHIBIT D



**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Providing Notice of the Judge's Intent to Prepare a Draft Opinion that Denies the Application and Imposes a Fine of \$25,000 on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated December 21, 2004, at San Francisco, California.

*Teresita C. Gallardo*  
\_\_\_\_\_  
Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\*\*\*\*\*

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

Last Update on 21-DEC-2004 by: SMJ  
A0210007 NOPOST

\*\*\*\*\* APPEARANCES \*\*\*\*\*

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For: New Century Telecom, Inc.

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San Francisco CA 94102  
(415) 703-1626  
tim@cpuc.ca.gov

\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*

# EXHIBIT E



**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2005 a copy of "Response to Administrative Law Judge's Ruling Providing Notice of the Judge's Intent to Prepare a Draft Opinion that Denies the Application and Imposes a fine of \$25,000" was served on all known parties to Application Number 02-10-007 by electronic version (e-mail) to each party named in the official service list and below:

Administrative Law Judge Timothy Kenney  
California Public Utilities Commission  
California State Building  
505 Van Ness Avenue  
Room 2001  
San Francisco, CA 94102-3298  
tim@cpuc.ca.gov

Executed on this 3rd day of February 2005.

By: 

Charles H. Helein  
The Helein Law Group, LLLP  
8180 Greensboro Drive  
Suite 700  
McLean, VA 22102

Attorneys for New Century Telecom, Inc.

**SERVICE LIST**

I, Sherry A. Reese, a legal secretary in the law offices of The Helein Law Group, LLLP, do hereby state and affirm that I have served the foregoing "Response to Administrative Law Judge's Ruling Providing Notice of the Judge's Intent to Prepare a Draft Opinion that Denies the Application and Imposes a fine of \$25,000" in Application Number 02-10-007, upon the following, by electronic version (e-mail), on the 28<sup>th</sup> day of January, 2005:

Administrative Law Judge Timothy Kenney  
California Public Utilities Commission  
California State Building  
505 Van Ness Avenue  
Room 2001  
San Francisco, CA 94102-3298  
tim@cpuc.ca.gov



---

Sherry A. Reese  
Assistant to Charles H. Helein  
The Helein Law Group, LLLP  
8180 Greensboro Drive  
Suite 700  
McLean, VA 22102

# EXHIBIT F



**Bondonno, Maria**

---

**From:** Kenney, Timothy  
**Sent:** Tuesday, September 20, 2005 3:40 PM  
**To:** Bondonno, Maria; Howard, James; chh@thlglaw.com  
**Subject:** Proposed Course of Action in A.02-10-007 re: New Century Telecom

Parties:

I intend to prepare a draft decision that does the following:

1. Denies Application (A.) 02-10-007 to transfer control of New Century Telecom (NCT).
2. Denies the Applicants' request to withdraw the Application.
3. Orders the Applicants to transfer NCT's remaining customers to another carrier in an orderly manner. In the alternative, requires SBC (and any other ILECs providing local service to NCT's customers) to send notices to NCT's existing customers that states the intrastate service provided by NCT is going to be terminated and that the ILECs will be the default carrier if the customers do not find another carrier. **NOTE:** This alternative approach would require CPSD to identify the ILECs currently serving NCT's customers so that the appropriate ILECs can be informed about what is required of them.
4. Penalizes NCT \$50,000 - \$100,000 for (i) violating Section 854, (ii) violating Rule 1 (see ALJ Ruling issued on December 21, 2004), (iii) failure to remit required surcharges, and (iv) the reasons set forth in CPSD's protest filed on July 27, 2005, and supplement filed on September 2, 2005.
5. Orders NCT to remit past-due surcharges.
6. Closes the proceeding.

Please file and serve by September 30, 2005, pleadings that (1) address the appropriateness of the proposed action described above, and (2) request evidentiary hearings regarding the above, if appropriate. Please email a copy of the pleadings to me in Microsoft Word format.

Thank you,

ALJ Kenney

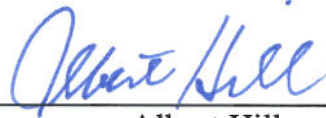
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of **COMMENTS OF THE CONSUMER PROTECTION AND SAFETY DIVISION TO NEW CENTURY TELECOM, INC.'S APPLICATION FOR REHEARING OF DECISION 06-04-048 in A.02-10-007** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on June 8, 2006 at San Francisco, California.



\_\_\_\_\_  
Albert Hill

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*